

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE ENROLLED ACT No. 1263

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-8-3.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This chapter applies to each municipality or township that has a full-time paid police or fire department. A municipality may exercise the power of establishing a merit system for its police or fire department under this chapter or by ordinance adopted under IC 36-1-4-14. **A township may exercise the power of establishing a merit system for its fire department under this chapter or by resolution established under IC 36-1-4-14.** This chapter does not affect merit systems established:

- (1) by ordinance under IC 36-1-4-14, except as provided by subsection (e); ~~or~~
- (2) **by resolution under IC 36-1-4-14, except as provided by subsection (f); or**
- (3) by a prior statute, except as provided by subsection (b).

(b) If a city had a merit system for its police or fire department under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2, IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29, IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain that system by ordinance of the city legislative body passed before January 1, 1983. The ordinance must initially incorporate all the provisions of the prior statute but may be amended by the legislative body after December 31, 1984. The ordinance retaining the system

HEA 1263 — Concur+



C
o
p
y

must be amended, if necessary, to include a provision under which the commission (or governing board of the merit system) has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must:

- (1) be a person of good moral character; and
- (2) except for a member of a fire department having a merit system established under IC 19-1-37.5, not be an active member of a police or fire department or agency.

(c) After December 31, 1984, the legislative body also may repeal the ordinance described in subsection (b), but the legislative body shall in the repealing ordinance concurrently establish a new merit system under section 3 of this chapter. (This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend the ordinance under subsection (b).) After the new merit system takes effect, all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(d) If a city had a merit system for its police or fire department under a prior statute but fails to retain that system under subsection (b), the city legislative body shall, before July 1, 1983, pass an ordinance to establish a new merit system under section 3 of this chapter. If the new merit system is approved as provided by section 4 of this chapter, it takes effect as provided by that section. However, if the new merit system is rejected under section 4 of this chapter, within thirty (30) days the city legislative body shall adopt an ordinance to retain the prior merit system. The prior merit system remains in effect until the new merit system takes effect, after which time all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(e) An ordinance adopted under IC 36-1-4-14 to establish a police or fire merit system must include a provision under which the commission, or governing board of the merit system, has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must be a person of good moral character who is not an active member of a police or fire department or agency. If an ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the ordinance must be amended to include this requirement.

(f) This chapter does not prevent a township or other unit that has adopted a merit system under section 3 of this chapter from

C
o
p
y



later amending or deleting any provisions of the merit system contained in this chapter. However, the merit system must include a provision under which the commission has at least one-third (1/3) of its members elected by the active members of the department, as set forth in section 8 of this chapter and a provision that incorporates the requirements of section 6(a) of this chapter. This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend under this subsection.

SECTION 2. IC 36-8-3.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The legislative body of a unit (**other than a township**) may, by ordinance, establish a merit system under this chapter for the police or fire department of the unit. **The legislative body of a township may, by resolution, establish a merit system under this chapter for the township's fire department.** Before the merit system takes effect, however, the system must be approved by a majority of the active members of the department in a referendum.

(b) The legislative body shall specify in the adopting ordinance **or resolution** which of the provisions of this chapter that are left to its discretion are being adopted.

(c) If a merit system is established under this chapter for each department of a unit, each department has a separate merit system.

SECTION 3. IC 36-8-3.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Within sixty (60) days after the adoption of an ordinance **or resolution** establishing a merit system, the safety board shall give at least three (3) weeks' notice to all active members of the department that a meeting will be held to approve or reject the merit system. The notice shall be given by posting it in prominent places in all stations of the department. The notice must designate the time, place, and purpose of the meeting.

(b) A copy of the ordinance **or resolution** shall be distributed to each active member of the department at least one (1) week before the date of the meeting.

(c) Only active members of the department may attend the meeting, and at the meeting one (1) of them shall be selected as chairman. All voting must be by secret written ballot. The other procedures for holding the meeting may be determined by the safety board and shall be posted in accordance with subsection (a).

(d) If a majority of the active members of the department vote to approve the merit system, the merit system takes effect on January 1 following the vote. Appointments to the merit commission shall be

C
o
p
y



made by March 1 following that January 1.

(e) If a majority of the active members of the department vote to reject the merit system, another proposal may not be put to a vote within one (1) year after the day the meeting is held.

SECTION 4. IC 36-8-3.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A majority of the active members of the department, by referendum under section 4 of this chapter, may request the unit's legislative body to establish a merit system for the department. The legislative body shall vote on the request within sixty (60) days after it is filed with the clerk of the legislative body **of a county or a municipality or the executive of a township.**

(b) If the legislative body votes to grant the request, the legislative body shall adopt an ordinance **or resolution** establishing a merit system under this chapter. A copy of the ordinance **or resolution** shall be distributed to each active member of the department, and another referendum under section 4 of this chapter is required before the merit system takes effect.

(c) If the legislative body votes to deny the request, the request may not be resubmitted to the legislative body for one (1) year. Before the request may be resubmitted, another referendum under section 4 of this chapter must be held.

SECTION 5. IC 36-8-3.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Within ninety (90) days after the commission is selected, the commission shall adopt rules governing:

- (1) the selection and appointment of persons to be employed as members of the department, subject to applicable pension statutes;
- (2) promotions and demotions of members of the department; and
- (3) disciplinary action or dismissal of members of the department.

(b) Before the rules required by this chapter are adopted by the commission, the commission must hold a public hearing to consider the adoption of the proposed rules. At least ten (10) days before the public hearing, the commission must have a notice of the hearing published in accordance with IC 5-3-1. The notice must state the time and place of the hearing and give briefly the subject matter of the proposed rules.

(c) At least ten (10) days before the hearing, one (1) copy of the proposed rules must be placed on file in the office of the:

- (1) clerk of ~~the unit~~ **a county, city, or town; or**
- (2) **executive of a township;**

for inspection by residents of the unit.

C
o
p
y



(d) At least ten (10) days before the hearing, three (3) copies of the proposed rules must be forwarded to the chief of the department and retained on file in ~~his~~ **the chief's** office for inspection at all times by members of the department.

(e) At the hearing, any interested person of the unit and any member of the department must be afforded an opportunity to present both oral and written evidence on any matter relating to the adoption of the proposed rules. The commission shall give due consideration to this evidence in making its final decision concerning the adoption of the proposed rules.

SECTION 6. IC 36-8-3.5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. A member of the department shall retire from the department when ~~he~~ **the member** reaches ~~his~~ **the member's** seventieth birthday. However, a member of the department who is seventy (70) years of age or older at the time the ordinance **or resolution** establishing the merit system takes effect may serve until the end of the calendar year.

SECTION 7. **An emergency is declared for this act.**

C
o
p
y



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

C
o
p
y

HEA 1263 — Concur+

